

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS AMADIO, et al. : CIVIL ACTION  
 :  
 v. :  
 :  
 JOHN GLENN, et al. : NO. 09-4937

MEMORANDUM

Dalzell, J.

February 1, 2011

This case arises from an auto accident that occurred on November 16, 2007. Plaintiff Thomas Amadio was driving his car along Packer Avenue near its intersection with 16th Street in Philadelphia when another vehicle suddenly struck his car. Defendant Haines Greenhouse, Inc. owned the car and defendant John Glenn drove it.

The parties have already completed discovery, and plaintiffs have filed a Daubert motion to preclude the opinion testimony of Drs. Kohler and Moberg ("the doctors") related to the results of the Minnesota Multiphasic Personality Inventory -2 ("MMPI-2") Test and to preclude any expert testimony related to credibility.

Defendants for their part have filed two Daubert motions, one to preclude any and all evidence, whether testimonial or otherwise, regarding plaintiffs' expert, Kenneth Creech, a professional engineer, and the other to preclude any and all evidence, whether testimonial or otherwise, of Dr. Robert

Cancro's opinion that plaintiff suffered a traumatic brain injury. As we have the parties' briefs and copious supporting documentation,<sup>1</sup> we now address the motions.

## **I. Factual Background**

According to plaintiffs' motion to preclude expert testimony, in addition to the November 16, 2007 accident, Amadio was in a car accident in 2001 that resulted in multiple injuries, including brain damage. Amadio now claims that the brain damage suffered from his prior injury worsened as a result of the car accident at issue here.

On March 9, 2010, at the request of plaintiffs' counsel, Dr. Robert Cancro examined Mr. Amadio. Dr. Cancro provided two expert reports. On April 9, 2010, Kenneth Creech, an engineer, provided an expert report after investigating the nature and cause of the collision between Amadio's 2005 Chrysler passenger car as it traveled west and Haines Greenhouse's 1995 Chevrolet Box Van as it exited a parking space near the intersection of Packer Avenue and 16<sup>th</sup> Street in Philadelphia. Defendants had Christian Kohler, M.D., and Paul J. Moberg, Ph.D.

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<sup>1</sup> In our October 1, 2010 Order, at the joint request of the parties, we cancelled the scheduled Daubert hearing. The question of whether to hold such a hearing "rests in the sound discretion of the district court." Padillas v. Stork-Gamco, Inc., 186 F.3d 412, 418 (3d Cir. 1999).

examine Amadio on April 19 and 22, 2010 to evaluate his present injuries, including his brain damage. During the course of their evaluation, Drs. Kohler and Moberg administered the MMPI-2 test to him.

Christian G. Kohler, M.D., is an Associate Professor of Psychiatry and Neurology at the Hospital of the University of Pennsylvania, Departments of Psychiatry and Neurology in the School of Medicine. He has been on the faculty of the University of Pennsylvania since 1997. He holds an M.D. from Innsbruck University, Austria. He is a Neuropsychiatrist in the Brain Behavior Clinic in the Department of Psychiatry at the University of Pennsylvania. He is a member of the American Neuropsychiatric Association and a member of the VAMC Mental Health and Behavioral Sciences Merit Review.

Paul Joseph Moberg, Ph.D., is an Associate Professor in the Department of Neurology in the University of Pennsylvania School of Medicine. He holds a B.A. from Augsburg College, an M.A. from Loyola College of Maryland, and a Ph.D. from the University of Health Sciences at The Chicago Medical School. He is a member of the International Neuropsychological Society, the American Psychological Association, Division 40, Clinical Neuropsychology, the American Board of Clinical Neuropsychology,

the American Academy of Clinical Neuropsychology, the National Academy of Neuropsychology, the Association of Chemoreception Sciences, the Society of Behavioral and Cognitive Neurology, and the Schizophrenia International Research Society.

Robert Cancro, M.D., is the Lucius N. Littauer Professor of Psychiatry at the New York University Langone Medical Center. He holds a B.S. from Fordham College and an M.D. and Med.D.Sc. from the State University of New York. He is President of the International Committee Against Mental Illness and the Director of the Mental Illness Prevention Center.

Kenneth Creech is a licensed professional engineer. He holds an Associates of Technology in Electronics and a B.S. in Engineering from Temple University, as well as a B.S. in Industrial Management from LaSalle University. He is a member of the Building Officials and Code Administrators International, the National Fire Protection Association, and the American Society of Heating, Refrigeration, and Air-Conditioning Engineers.

## **II. Legal Standard**

The Federal Rules of Evidence provide that, where "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," an expert who is qualified "by

knowledge, skill, experience, training, or education" may offer testimony in the form of an opinion. Fed. R. Evid. 702. Such evidence is admissible only where "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." Id.

Rule 702 incorporates the Supreme Court's holding in Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993), in the form of what our Court of Appeals has called "a trilogy of restrictions on expert testimony: qualification, reliability and fit." Schneider v. Fried, 320 F.3d 396, 404 (3d Cir. 2003). In evaluating opinion testimony on motions such as these, "the district court acts as a gatekeeper, preventing opinion testimony that does not meet the requirements of qualification, reliability and fit from reaching the jury." Id. As a general rule, the party that wishes to introduce the expert testimony bears the burden of demonstrating that the testimony is admissible by a preponderance of the evidence. Daubert, 509 U.S. at 592-93.

Because we address these motions in our role as gatekeeper rather than as finder of fact, our "focus. . . must be solely on principles and methodology, not on the conclusions that

they generate." Daubert, 509 U.S. at 595. Nevertheless, in order to admit the evidence we must be satisfied that the proffered testimony represents what Rule 702 refers to as "scientific. . . knowledge." As Daubert explains: "The adjective 'scientific' implies a grounding in the methods and procedures of science. Similarly, the word 'knowledge' connotes more than subjective belief or unsupported speculation." Id. at 590. In other words, in order for scientific testimony to be sufficiently reliable it "must be derived by the scientific method" and "must be supported by appropriate validation -- i.e., 'good grounds,' based on what is known." Id. The scientific method requires "the generation of testable hypotheses that are then subjected to the real world crucible of experimentation, falsification/validation, and replication." Caraker v. Sandoz Pharm. Corp., 188 F. Supp. 2d 1026, 1030 (S.D. Ill. 2001).

"The reliability requirement ... should not be applied too strictly." Holbrook v. Lykes Bros. S.S. Co., 80 F.3d 777, 784 (3d Cir. 1996). So long as "the expert has 'good grounds' for the testimony, the scientific evidence is deemed sufficiently reliable." Id. The need for good grounds, however, "means that any step that renders the analysis unreliable under the Daubert factors renders the expert's testimony inadmissible. This is

true whether the step completely changes a reliable methodology or merely misapplies that methodology." In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 745 (3d Cir. 1994) ("Paoli II")

(emphasis in original). Although "[t]he Rules of Evidence embody a strong preference for admitting any evidence that may assist the trier of fact," Pineda v. Ford Motor Co., 520 F.3d 237, 243 (3d Cir. 2008), "the trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable." Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152 (1999).

We must also consider "whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." Daubert, 509 U.S. at 591 (quoting United States v. Downing, 753 F.2d 1224, 1242 (3d Cir. 1985)). "Rule 702's 'helpfulness' standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility." Id. at 591-92. This helpfulness requirement -- which our Court of Appeals calls "fit" -- is, in the end, "the ultimate touchstone of admissibility." Holbrook, 80 F.3d at 784.

As for Federal Rule of Evidence 403, it allows a district court to exclude relevant evidence "if its probative

value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. "Federal judges must. . . exclude proffered scientific evidence under Rules 702 and 403 unless they are convinced that it speaks clearly and directly to an issue in dispute in the case, and that it will not mislead the jury." U.S. v. Ford, 481 F.3d 215, 220 n.6 (3d Cir. 2007) (quoting Daubert v. Merrell Dow Pharm, Inc., 43 F.3d 1311, 1321 n.17 (9th Cir. 1995)) (emphasis in original). Expert testimony that is admissible pursuant to Rule 702 and Daubert remains subject to balancing analysis under Rule 403. See Paoli II, 35 F.3d at 746-47.

### **III. Analysis**

#### **A. Plaintiffs' Motion to Preclude the Testimony of Drs. Kohler and Moberg as it Relates to the MMPI-2 Test**

Plaintiffs move to preclude the opinion testimony of Drs. Kohler and Moberg relating to the results of the MMPI-2 test and to preclude any expert testimony related to Amadio's credibility. Plaintiffs (understandably) do not contest the doctors' qualifications. Instead, they challenge the reliability



of their methodology and the fit of their opinions to the evidence.

This Court "acts as a gatekeeper to ensure that any and all expert testimony or evidence is not only relevant, but also reliable." Pineda, 520 F.3d at 243 (internal quotation marks omitted). Pursuant to Rule 702's second requirement, "an expert's testimony is admissible so long as the process or technique the expert used in formulating the opinion is reliable." Paoli II, 35 F.3d at 742. Our Court of Appeals, however, has "cautioned that the evidentiary requirement of reliability is lower than the merits standard of correctness," Pineda, 520 F.3d at 247 (internal quotation marks and alterations omitted), because "[a]dmissibility decisions focus on the expert's methods and reasoning," while "credibility decisions arise after admissibility has been determined." Kannankeril v. Terminix Int'l, Inc., 128 F.3d 802, 806 (3d Cir. 1997).

Several non-exhaustive factors guide our inquiry into the reliability of expert testimony:

- (1) whether a method consists of a testable hypothesis;
- (2) whether the method has been subject to peer review;
- (3) the known or potential rate of error;
- (4) the existence and maintenance of standards controlling the technique's operation;
- (5) whether the method is generally accepted;
- (6) the relationship

of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.

Pineda, 520 F.3d at 247-48. These factors are "neither exhaustive nor applicable in every case," Kannankeril, 128 F.3d at 806-07, because the inquiry into the reliability of expert testimony is meant to be "flexible," Daubert, 509 U.S. at 594.

In order to be admissible, expert conclusions must also be helpful to the finder of fact. Holbrook, 80 F.3d at 784. As noted, our Court of Appeals has described this as "fit," and it deals with both the relevance of the conclusion to the scientific questions at issue and any analytical gaps in the experts' conclusions that may render them misleading when applied to the evidence in the case. General Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997).

Plaintiffs argue that based on the results of the MMPI-2 test, Drs. Kohler and Moberg opined that Mr. Amadio's answers demonstrated "over-reporting and exaggeration of psychopathology," "extreme levels of exaggeration," "responding bias," and that "Mr. Amadio skewed his responses toward greater psychopathology." Plaintiffs' Memorandum of Law in Support of its Daubert Motion to Preclude Opinion Testimony of Drs. Kohler

and Moberg Related to the Results of the MMPI-2 Test and to preclude Any Expert Testimony Related to Credibility ("Pl. Mot.") at 1-2. Plaintiffs contend that their evaluation of Mr. Amadio using the MMPI-2 test was flawed because (1) it cannot be validly used or interpreted in patients who are known to be brain damaged, and (2) one of the sub-scales of the test designed to detect "malingering" -- known as the "Fake Bad Scale" -- is scientifically invalid as it overestimates malingering. Based on these reasons, plaintiffs argue that evidence related to the MMPI-2 test should be precluded under Rule 702 and Daubert because the doctors' use of this test is not reliable and does not fit the evidence. Id. at 5. Plaintiffs claim that the relevant scientific literature makes it clear that the standard use of the MMPI-2 with patients with brain injuries is "psychometrically indefensible." Id. (citing Groth-Marnat, Gary, Neuropsychological Assessment in Clinical Practice: A Guide to Test Interpretation and Integration (John Wiley & Sons, Inc. 2000) at 464-65).

Defendants contend that "plaintiffs are unsatisfied with the MMPI-2 test results," and claim that attacking the tests used in a medical examination through the vehicle of a motion in limine is improper. They argue that the test results should be

admitted and then subjected to vigorous cross-examination.

Memorandum of Law in Support of Defendants' Response to Plaintiffs' Motion in Limine to Preclude the Opinion Testimony of Drs. Kohler and Moberg Related to the Results of the MMPI-2 Test ("Def. Resp.") at unnumbered page 5.

As a general matter, we agree that if a plaintiff wants to challenge the interpretation of certain results they should not be precluded, but should be subjected to cross-examination. Shea v. Long Island R.R., No. 05-9768, 2009 WL 1424115, at \*5 (S.D.N.Y. May 21, 2009) ("If certain MMPI-2 scales may be used to challenge [the doctor's] opinions, or there are weaknesses in his reasons for discounting alternative explanations for [plaintiff's] elevated scores, the remedy is not preclusion but cross-examination and presentation of contrary evidence."). But here defendants fail to address plaintiffs' point that the MMPI-2 test should not be administered to people with known brain damage. Defendants do not dispute that Mr. Amadio suffered brain damage from his earlier accident. Def. Resp., Ex. A at 9 ("Thomas Amadio . . . suffered a [sic] multiple severe injuries as the result of a motor vehicle accident in November 2001, including severe facial injuries and significant traumatic brain injury, requiring hospitalization."). The doctors also

acknowledge that Mr. Amadio only experienced "partial recovery" from his 2001 injuries. Id.

Defendants do not respond to this aspect of plaintiffs' argument at all. Instead, they recast the substance of plaintiffs' motion as being that "the use of the MMPI-2 test is scientifically unreliable." Id. at unnumbered page 5.

Defendants cite a single case, Babish v. Sedgwick Claim Mgmt. Servs., Inc., No. 07-1539, 2009 WL 563951 (W.D. Pa. Mar. 2, 2009), to argue that the use of the MMPI-2 test is scientifically sound. But that case does not address the issue of whether the MMPI-2 test is proper on one with known brain damage. It is certainly true that "the MMPI [may be] used to screen for personality and psychosocial disorders[, and] is also frequently administered as part of a neuropsychological test battery to evaluate cognitive functioning," id. at unnumbered page 6. But defendants have failed to show whether (a) their opinion, insofar as it is based on the MMPI-2 test, consists of a testable hypothesis with regard to brain damaged victims, (b) the MMPI-2 has been subject to peer review on the subject of brain damaged people, and (c) there exist standards controlling the technique's operation for brain damaged individuals, or most particularly and

importantly, (d) the method is generally accepted for use on those who are brain damaged.

Thus, we will preclude the expert opinion testimony of Drs. Kohler and Moberg relating to the results of the MMPI-2 test and its sub-scales (including the "Fake Bad Scale") pursuant to Fed. R. Evid. 702. Because we will preclude testimony relating to the MMPI-2 test results, we need not address plaintiffs' contention regarding the "Fake Bad Scale," which is a sub-scale of the MMPI-2 test.

Plaintiffs argue that where expert testimony as to credibility encroaches on the jury's exclusive function to make such determinations, that testimony does not "assist the trier of fact" as Rule 702 requires. Pl. Mot. at 7. Plaintiffs contend that defendants have improperly proffered medical experts to opine that Mr. Amadio is exaggerating his complaints and is not credible and have based these opinions on defendants' improper and invalid use of the MMPI-2 test. Plaintiffs reason that the doctors' view that Mr. Amadio is not credible should be precluded under Fed. R. Evid. 403 because this type of opinion creates a serious danger of confusing or misleading the jury. Id. at 2. Plaintiffs contend that we should preclude the doctors' conclusions that Mr. Amadio's "self-report of emotional

disruption and somatic complaints is not considered accurate and Mr. Amadio is likely functioning better than he is presenting" because its probative value is substantially outweighed by the danger of unfair prejudice and would impermissibly usurp the jury's function as the finder of fact with regard to credibility. Id. at 10. Defendants respond that the doctors never intended to testify outside of Mr. Amadio's objective test results or outside their opinions based upon those results. Def. Resp. at unnumbered page 8.

Because we will preclude Drs. Kohler and Moberg's testimony with regard to the MMPI-2 test, we need not address plaintiffs' argument that the doctors' testimony with regard to those results may have improperly impeached Mr. Amadio's credibility. To the extent that the doctors may have intended to opine on Mr. Amadio's credibility with regard to other test results, they are precluded from doing so. Coney v. NPR, Inc., 312 Fed. App'x 469, 474 (3d Cir. 2009) ("A doctor. . . cannot pass judgment on the alleged victim's truthfulness in the guise of a medical opinion, because it is the jury's function to decide credibility," quoting United States v. Whitted, 11 F.3d 782, 785-86 (8th Cir. 1993)).

**B. Defendants' Motion to Preclude  
the Testimony of Dr. Robert Cancro**

Defendants argue that Dr. Cancro is not qualified to offer his opinion. Defendants further argue that Dr. Cancro's opinion, even if he were qualified to give it, is not reliable.

Qualification "requires that the witness possess specialized expertise." Pineda, 520 F.3d at 244 (internal quotation marks omitted). Our Court of Appeals has "interpreted [this] requirement liberally" so that "a broad range of knowledge, skills, and training" suffice to qualify an expert. Id. (internal quotation marks omitted). An "expert's testimony is not limited to the area in which he or she ... specialize[s]," but "the party offering the expert must demonstrate that the expert has the necessary expertise." Ferris v. Pa. Fed'n Bd. of Maint. of Way Employees, 153 F. Supp. 2d 736, 743 (E.D. Pa. 2001). If the expert testimony falls outside a witness's expertise, we will exclude it. Id. But we may not exclude proposed expert testimony simply because we do not deem the expert the best qualified or because the expert is without the appropriate specialization. Holbrook, 80 F.3d at 782. The "best" qualified is a matter of weight upon which reasonable jurors may disagree. Id. A certain degree or background is not required under the flexibility of Rule 702. See id.



Defendants contend that Dr. Cancro does not possess the requisite requirements to qualify as an expert with respect to determining whether Mr. Amadio has suffered a "traumatic brain injury." Defendants John Glenn and Haines Greenhouse, Inc.'s Brief in Support of its Motion in Limine to Preclude Any and All Evidence, Whether Testimonial or Otherwise, of Dr. Robert Cancro's Opinion that Plaintiff Suffered a Traumatic Brain Injury Per Fed. R. Evid. 702 and 403 ("Def. Cancro Mot.") at unnumbered page 2. Defendants also argue that Dr. Cancro has failed to specify the process, method or technique he used in formulating his opinion that Mr. Amadio suffered a traumatic brain injury, and therefore his opinion should be excluded because it is speculative and thus unreliable. Id. at unnumbered page 4. Defendants claim that allowing plaintiffs to offer Dr. Cancro's opinion regarding whether Mr. Amadio suffered a traumatic brain injury would allow the jury to take his unfounded opinions as evidence, and thus would unfairly prejudice defendants. Id. at unnumbered page 5.

As his curriculum vitae shows, Dr. Cancro is an internationally renowned psychiatrist. There is no question that Dr. Cancro has sufficient formal qualifications. Apart from his work as the Lucius N. Littauer Professor of Psychiatry at NYU

Medical Center and as the Director of the Mental Illness Prevention Center, Dr. Cancro has also been on the editorial board of about twenty-five separate publications, including many prominent peer-reviewed journals. Def. Cancro Mot., Ex. D. Dr. Cancro was previously the consulting psychiatrist for the New York Yankees and a member of the Research Advisory Committee for the United States Secret Service. He is the Chairman on the Section on Psychosocial Rehabilitation for the World Psychiatric Association, Chairman of the Scientific Committee of the World Association of Psychosocial Rehabilitation and was a Member of the Expert Advisory Panel on Mental Health for the World Health Organization until 2003. Id. Thus, we find Dr. Cancro amply qualified to opine as an expert in this case as to whether Mr. Amadio has experienced a traumatic brain injury. And, even if it were necessary for Dr. Cancro to have specialized qualifications, we note from his c.v. that he also has expertise in neurology and brain injury as well as general expertise as a licensed physician. Id.

With regard to whether Dr. Cancro's methodology is sound, "a judge should find an expert opinion reliable under Rule 702 if it is based on 'good grounds,' i.e., if it is based on the methods and procedures of science." Paoli II, 35 F.3d at 744.

Defendants argue that Dr. Cancro has not specified his method, process or technique, but Dr. Cancro states in his reports that he reviewed the neuropsychological report Dr. Goldberg wrote in March of 2010, the neuropsychological evaluation that was performed in May of 2002, the extensive medical records that plaintiffs' counsel submitted to him, and examined Mr. Amadio himself. Def. Cancro Mot., Ex. B, Ex. C. Other courts have found this methodology to be reliable. For example, Judge Pratter, in Qeisi v. Patel, No. 02-8211, 2007 WL 527445 (E.D. Pa. Feb. 9, 2007), found that "[a]n expert may be found reliable based on 'personal knowledge or experience'. . . . Pointing to the symptoms a patient exhibits. . . and making an evaluation or diagnosis based on those symptoms is precisely the type of 'opinion' that doctors make every day in practice." Id. at \*7 (internal citations omitted). And "it is perfectly acceptable, in arriving at a diagnosis, for a physician to rely on examinations and tests performed by other medical practitioners." Kannankeril, 128 F.3d at 807. Thus, we find Dr. Cancro qualified and his opinion reliable, and will deny defendants' motion to preclude Dr. Cancro's opinion that plaintiff suffered a traumatic brain injury.

**C. Defendants' Motion to Preclude  
the Testimony of Kenneth Creech**

Defendants move to preclude the testimony of Kenneth Creech, P.E., arguing that he does not have the requisite requirements to qualify as an expert with regard to his opinions about Mr. Amadio's injuries, Mr. Glenn's failure to see Mr. Amadio's car, and Mr. Glenn's negligence in operating the box van. Memorandum of Law in Support of Defendants John Glenn and Haines Greenhouse, Inc.'s Motion in Limine to Preclude Any and All Evidence, Whether Testimonial or Otherwise, Regarding Plaintiff's [sic] Expert Kenneth Creech ("Def. Creech Mot.") at unnumbered page 2.

Plaintiffs submitted the expert report of Mr. Creech, a licensed professional engineer with expertise in accident reconstruction, which discusses the mechanism of the accident and the forces involved. But Mr. Creech also opined that after the vehicles collided, "[t]he inertia force[d] [Mr. Amadio's] head forward[,] slamming [it] into the steering wheel, next [his] head bounce[d] backward from the reaction with the steering wheel causing trauma to the head, neck and shoulders." Id., Ex. B at 3. In addition, Mr. Creech opined that "[t]he driver of the box van failed to observe the oncoming vehicle and collided with the Chrysler 300 while entering into the westbound traffic on Packer

Avenue. The careless operation of the truck caused serious injury to the driver." Id. at 5. Defendants argue that Mr. Creech's assertions are without foundation and constitute speculation on his part. Id. at unnumbered page 5.

Plaintiffs respond that Mr. Creech is a licensed professional engineer with specialized knowledge, as stated on his c.v., in several areas, including automobile accident reconstruction. He is licensed as an engineer in six states, including Pennsylvania. Id., Ex. B at unnumbered page 6. Mr. Creech has over thirty years of experience, as well as taking continuing education courses in accident reconstruction. Mr. Creech is certainly qualified as an accident reconstruction expert. And with regard to the reliability of his methods, we find that he adequately described his methodology. We need not, as plaintiffs invite us to do, take judicial notice of the wikipedia.org pages describing vector analysis or Newton's second law of motion.

But we must take issue with Mr. Creech's report with regard to the "fit" of his opinion to the facts of this case. As we noted above, there must be a "valid scientific connection to the pertinent inquiry as a precondition to admissibility." Daubert, 509 U.S. at 592. Opining that Mr. Amadio sustained

"trauma to the head, neck, and shoulders" does not fit the pertinent inquiry Mr. Creech's report is meant to address. Mr. Creech is not a medical doctor, and his opinion with regard to "trauma" -- which is, after all, a medical diagnosis -- is not something about which he is qualified to opine. His opinion in this regard will not help the trier of fact, and it may unfairly prejudice defendants.

Plaintiffs argue that Mr. Creech's opinion that Mr. Glenn failed to see Amadio's car is consistent with Mr. Glenn's admission in his deposition that he did not see Mr. Amadio's car. Pl. Creech Resp. At 9. Nevertheless, opining about Mr. Glenn's failure to see Mr. Amadio's car is not something that naturally follows from analyzing the physical forces at play between two vehicles as they collide.

Finally, plaintiffs do not respond to defendants' argument about Mr. Creech's opinion that "[t]he careless operation of the truck caused serious injury to the driver" is outside the scope of his expertise. That opinion is a legal conclusion unrelated to the force of the vehicles impacting one another, and is not proper in this context. Thus, we find that although Mr. Creech is qualified as an accident reconstruction expert, and his methodology with regard to accident

reconstruction is reliable, his testimony does not fit the facts of the case with regard to the opinions cited above that are outside the scope of his expertise. Thus, we will grant defendants' motion to preclude the expert testimony of Kenneth Creech.

BY THE COURT:

\_\_\_\s\Stewart Dalzell